APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,164	09/30/2003	Lawrence J. Gutkowski	200311408-1	8183

22879   7590   08/26/2009
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EXAMINER
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ART UNIT	PAPER NUMBER
2628	

NOTIFICATION DATE	DELIVERY MODE
08/26/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte LAWRENCE J. GUTKOWSKI and
OTTO K. SIEVERT

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Appeal 2009-003354
Application 10/677,164
Technology Center 2600

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Decided: August 24, 2009

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Before ADRIENE LEPIANE HANLON, TERRY J. OWENS, and
LINDA M. GAUDETTE, *Administrative Patent Judges.*

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
rejection of claims 1-57, which are all of the pending claims. We have
jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellants claim a method, system and computer readable medium for organizing a digital image. Claims 1 and 23 are illustrative:

1.   A method for organizing a digital image, comprising:

identifying, within the digital image, a set of digitized objects; and

adjusting at least one digitized object within the digital image so that the adjusted digitized object at least substantially conforms to a prescribed state.

23.   A method for organizing a digital image, comprising:

identifying, within the digital image, a set of digitized objects;

providing an alignment grid for the digital image;

for each digitized object:

       rotating that digitized object so that an alignment axis of that digitized object is generally parallel with an axis of the alignment grid; and

       positioning that digitized object so that an edge of that digitized object is substantially in line with a grid line of the alignment grid; and

       wherein the steps of identifying, providing, rotating, and positioning are performed automatically upon generation of the digital image.

The References

Geigel	2002/0122067 A1	Sep. 5, 2002
Venable	6,738,154 B1	May 18, 2004
		(Filed Jan. 21, 1997)
Nakane	6,999,207 B2	Feb. 14, 2006
		(Filed Sep. 19, 2001)

The Rejections

The claims stand rejected as follows: claims 1-5, 24-28, 47, 53, 54 and 57 under 35 U.S.C. § 102(e) over Geigel; claims 6-23, 29-46 and 48-52 under 35 U.S.C. § 103 over Geigel in view of Venable; and claims 55 and 56 under 35 U.S.C. § 103 over Geigel in view of Nakane.

OPINION

We affirm the Examiner's rejections.

*Rejection of claims 1-5, 24-28, 47, 53, 54 and 57
under 35 U.S.C. § 102(e) over Geigel*

Issue

Have the Appellants shown reversible error in the Examiner's determination that Geigel discloses, expressly or inherently, adjusting a digitized object within a digital image?

Findings of Fact

Geigel discloses an automated album layout method which comprises the steps of evaluating the 'x' and 'y' position coordinates, scale and rotation of each of the input images objects within a page according to fitness function parameters in a genetic engine. Then, a page layout is created based on user preferences including at least one of: white space, overlap, rotation, spatial balance, rotational balance, border symmetry, and emphasis. Then, the page layout is displayed for user viewing, and refining the page layout based on further user action. Finally, the page layout is formatted for printing. [¶ 0011]

Analysis

"Anticipation requires that every limitation of the claim in issue be disclosed, either expressly or under principles of inherency, in a single prior art reference." *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1255-56 (Fed. Cir. 1989).

The Appellants argue that "Geigel does not teach identifying images within a given album page and then adjusting at least one of those images to a prescribed state" (Br. 5). The Appellants argue that "[o]nce [Geigel's] images are placed on a given album page, they are not later identified or adjusted" (Br. 6).

The Appellants' claims recite adjusting within a digital image, not within a given album page. Geigel's evaluation of the 'x' and 'y' position coordinates, scale and rotation of each of the input image's objects within a page according to fitness function parameters in a genetic engine (¶ 0011) is an identification of a digitized object within a digital image. The subsequent page layout creation, *see id.*, corresponds to the Appellants' adjusting of the digitized object within the digital image.

Conclusion of Law

The Appellants have not shown reversible error in the Examiner's determination that Geigel discloses, expressly or inherently, adjusting a digitized object within a digital image.

> *Rejection of claims 6-23, 29-46 and 48-52 under*
> *35 U.S.C. § 103 over Geigel in view of Venable*

Issue

Have the Appellants shown reversible error in the Examiner's determination that the applied references would have rendered prima facie obvious, to one of ordinary skill in the art, performing the identifying, providing, rotating and positioning required by claim 23, automatically upon generation of the digital image?

Findings of Fact

Venable discloses "an intelligent scanning system for processing a digital input image to automatically characterize a plurality of objects

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therein" (abstract). "In the digital document, the objects may be derotated, shifted, cropped or otherwise aligned in a predetermined fashion in accordance with a template." *See id.* Once an image is scanned, it is analyzed to identify the image objects and then the image objects may "be manipulated by the smart scanning system to automatically orient and position the images, for example they may be automatically placed in a predefined template and rendered, such as the representation depicted in region 430 of the user interface" (col. 12, l. 66 – col. 13, l. 6). "[T]he pixels representing the object itself are the only pixels that are derotated to produce the O' output image" (col. 13, ll. 28-30; Fig. 12). Object scaling, rotation and cropping by the user are in addition to the scaling, rotation and cropping preferably automatically applied by the system as the result of the object recognition methods (col. 13, ll. 31-43).

Analysis

The Appellants argue that "upon" means "immediately following on: very soon after", and that "Geigel, on the other hand, mentions nothing of identifying images within an album page following the generation of that album page" (Br. 7; Reply Br. 4-5).

The Appellants' claim 23 requires that the digital image identification and adjustments "are performed automatically upon generation of the digital image." Geigel's "steps of evaluating the 'x' and 'y' position coordinates, scale and rotation of each of the input images objects within a page according to fitness function parameters in a genetic engine (¶ 0011) identify the digital image. Because those steps are performed automatically, they appear to be done upon the digital image's generation. There is no disclosure of a delay between the generation and evaluation of the digital

image, and it does not appear that there would be any benefit to such a delay. Geigel's subsequent page layout adjusts the digital image (¶ 0011).

Moreover, once Venable's image is scanned (i.e., upon generation of the digital image), the image objects are automatically identified and manipulated (col. 12, l. 66 – col. 13, l. 6). Thus, even if Geigel does not disclose such identifying and adjusting upon generation of the digital image, Venable would have led one of ordinary skill in the art to do so to obtain the benefit of identification and adjustment without delay. *See KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) ("[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill").

The Appellants argue that Venable "is silent on" "identifying, within a digital image, a set of digitized objects or rotating, positioning, or otherwise adjusting a digitized object within a distinct digital image" (Reply Br. 5).

The identifying and adjusting are disclosed by Venable as set forth in the above Findings of Fact and, as pointed out above, also are disclosed by Geigel.

Conclusion of Law

The Appellants have not shown reversible error in the Examiner's determination that the applied references would have rendered prima facie obvious, to one of ordinary skill in the art, performing the identifying, providing, rotating and positioning required by claim 23, automatically upon generation of the digital image.

*Rejection of claims 55 and 56 under 35 U.S.C. § 103
over Geigel in view of Nakane*

Issue

Have the Appellants shown reversible error in the Examiner's determination that the applied references would have rendered prima facie obvious, to one of ordinary skill in the art, identifying, within a digital image, a set of digitized objects and adjusting at least one digitized object within the digital image so that the adjusted digitized object at least substantially conforms to a prescribed state?

Findings of Fact

The Examiner relies upon Nakane for a disclosure of "a system that scans a plurality of photos, where the photos are automatically detected on the side of the copying machine, so that the photos are automatically arranged in a predetermined layout to be printed out" (Ans. 8).

Analysis

The Appellants argue that Nakane "is silent on" "identifying, within the digital image, a set of digitized objects and adjusting at least one digitized object within the digital image so that the adjusted digitized object at least substantially conforms to a prescribed state" (Br. 8; Reply Br. 6).

That argument is not well taken because the Appellants are attacking Nakane individually when the rejection is based on a combination of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Young*, 403 F.2d 754, 757-58 (CCPA 1968). The Examiner relies upon Geigel for a disclosure of identifying, within a digital image, a set of digitized objects and adjusting at least one digitized object within the digital image so that the

adjusted digitized object at least substantially conforms to a prescribed state (Ans. 7-8).

Conclusion of Law

The Appellants have not shown reversible error in the Examiner's determination that the applied references would have rendered prima facie obvious, to one of ordinary skill in the art, identifying, within a digital image, a set of digitized objects and adjusting at least one digitized object within the digital image so that the adjusted digitized object at least substantially conforms to a prescribed state.

DECISION/ORDER

The rejections of claims 1-5, 24-28, 47, 53, 54 and 57 under 35 U.S.C. § 102(e) over Geigel, claims 6-23, 29-46 and 48-52 under 35 U.S.C. § 103 over Geigel in view of Venable, and claims 55 and 56 under 35 U.S.C. § 103 over Geigel in view of Nakane are affirmed.

It is ordered that the Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

kmm

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